

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

**STATEMENT OF ROBERT JAMISON
DEPUTY ADMINISTRATOR**

Before the

**SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE
PROTECTION, AND CYBERSECURITY
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

June 16, 2006

Good morning Chairman Lungren, Ranking Member Sanchez, and Members of the Subcommittee. I am pleased to have this opportunity to testify on behalf of the Transportation Security Administration (TSA) on the security of hazardous materials transported by commercial motor vehicles and considerations related to establishing a permit process for security sensitive materials.

Last November, TSA provided the Subcommittee with a full report on our hazardous materials (hazmat) threat assessment program implementing Section 1012 of the USA PATRIOT Act. Today, I would like to update you on the progress we are making.

The Hazmat Threat Assessment Program

TSA is proud of the progress we have made in implementing the hazmat threat assessment program. In the sixteen months since the Department of Homeland Security (DHS) began fingerprint-based checks, we have processed nearly 310,000 applications. Today, 33 States and the District of Columbia participate as Agent States through which TSA collects and transmits fingerprint and driver application information at 170 enrollment sites. There are 17 Non-TSA Agent States. Recently, one of these states elected to have TSA perform collection and processing duties beginning later this year.

TSA has established a comprehensive program, and we continually seek opportunities for improvement. We have significantly reduced processing time by implementing electronic submission requirements, including a web-based application intake portal for use by Non-Agent states. Customer service and response times to state queries have been significantly enhanced through the introduction of the State Portal, a secure web site that provides all states with electronic notification of threat assessments for drivers and driver processing status. TSA engages daily with state motor vehicle departments, industry associations, and other stakeholders to expand the number of sites that collect fingerprint and commercial driver information.

All of these improvements have helped the program process a large number of applications in a short time. Since initiation of the program, the average processing time for all applicants is approximately seventeen days, but for the past three months, the average processing time has been reduced to ten days, even as the average number of applications received has risen from 10,000 in the first months to over 24,000 per month today. TSA has received 308,018 applications, 3,509 appeal requests, and 385 waiver requests. To date, the total number of applicants disqualified is 2,386, less than one percent of all applicants.

Additional improvements anticipated in the near future include an updated application that will reduce the number of initial determinations requiring follow-up, further decreasing average processing times. TSA is considering amending its rules to eliminate redundant checks for drivers transferring among states, increasing interoperability with other federal agencies that conduct comparable checks, and improving operational processes. TSA is moving forward with technical improvements to our information technology system that will reduce operating costs, improve performance and reliability, and enhance security and interoperability.

After the Transportation Workers Identification Credential (TWIC) program rolls out, drivers with a hazardous material endorsement (HME) who have already completed a security threat assessment and must obtain a TWIC to have unescorted access to secure areas of maritime facilities and vessels will not be required to undergo a new threat assessment as part of their TWIC application. However, these drivers will have to enroll and provide biometrics that are used to verify identity on the TWIC and pay an incremental fee to cover those costs.

As we pursue improvements in the hazmat threat assessment program, we are looking at ways to leverage data collection innovations that will reduce duplication of effort among DHS vetting and credentialing programs. The Department is carefully assessing the interoperability of a variety of programs to ensure that they are complementary, while working toward the ultimate convergence of our credentialing programs.

Risk-Based Approach to Hazardous Materials Security

While the hazmat threat assessment program moves forward successfully, we are examining TSA's programs in relation to the agency's key operating principles. One of these key principles is to use risk analysis to make operational decisions, assessing and undertaking risk management and mitigation measures based on their effect on the total transportation network.

TSA continues to aggressively address the risk posed by hazardous materials moving through domestic supply chains. Through risk-based analyses we have implemented a number of programs designed to mitigate these risks. Our recent work in freight rail focuses on identifying and implementing voluntary security action items designed to mitigate the risk of materials that pose a Toxic Inhalation Hazard in domestic freight rail transportation. In coordination with DOT we will continue to develop and implement

risk-based security programs to secure the transportation of hazardous materials in all modes.

Security Sensitive Materials Permits

As the “SAFE Truckers Act of 2006” has only recently been brought to our attention, TSA has only preliminary comments today. We will want to work with other components of DHS and other federal agencies in looking at its potential implications for security. We applaud the Subcommittee for taking a risk-based approach in considering this issue. In concert with narrowing the list to security sensitive materials (SSM), based on risk, it may be appropriate to consider vetting all Commercial Driver’s License (CDL) holders against terrorist watchlist databases.

One of TSA’s preliminary concerns is that the bill would establish duplicative requirements for threat assessments for commercial drivers transporting hazardous materials. If the bill requires drivers who transport SSM to obtain fingerprint-based threat assessments, it may duplicate requirements for drivers under the USA PATRIOT Act and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

The timeframe established by the bill is not sufficient for an appropriate regulatory analysis, including the evaluation of costs and benefits needed to support a rule. Development of an SSM list is a complex task that will require time for careful analysis. In its current form, the bill also does not provide sufficient time to modify existing infrastructure to process and adjudicate permit applications and to complete the processing of all covered drivers.

We recommend that the proposed legislation not prejudice the outcome of the regulatory analysis. Any modifications to the hazardous materials list that forms the basis of threat assessments should be developed through the collective efforts of DHS, DOT, other interested federal agencies, and industry and other stakeholders. The inclusion of radioactive or nuclear materials would be of major interest to numerous departments and agencies. The Domestic Nuclear Detection Office, for example, would have a strong interest in exactly how that list of materials is determined, as well as consistency with lists developed by the Nuclear Regulatory Commission, the Department of Energy, DOT, the International Atomic Energy Agency, and others. Not to be overlooked is the role fulfilled by our state partners. It will be essential that any possible modifications to the current regime be done in full partnership with them.

We must analyze the relative risk for diversion and misuse of the hazardous materials being considered for exclusion from the background requirements. Second, we cannot limit our review to individual materials, but rather must consider all possible safety and security risks which come from instances where various combinations of relatively low risk hazardous materials could result in substantial death, injury, or damage to the environment. Third, we must consider factors affecting vulnerability to shipments in

transport. Finally, we must carefully analyze the degree to which driver background checks would identify and address those potential vulnerabilities.

In our regulatory analysis, we would also want to determine the population of drivers that would be covered by a new system. Today companies often require all their drivers to have an HME on their commercial driver's license because of the unpredictable nature of the shipments drivers may transport. This gives the company the flexibility to match a load with a driver at any given time to satisfy just-in-time delivery requirements. Under a potential SSM permit system, a company would still need to match specific drivers with a specific short list of security sensitive materials. In considering the feasibility of any change, it will be important to know whether drivers will be required to not only obtain an HME, but also obtain the SSM permit, even though the likelihood of transporting SSM may be small. TSA should have the opportunity to consider whether establishing a list of SSM would reduce shipper options for transporting certain commodities.

We would also need to consider the potential implications of the TWIC program for commercial drivers. The proposed TWIC program would require all individuals who require unescorted access to secure areas of facilities regulated under the Maritime Transportation Security Act to obtain a TWIC. This includes CDL holders transporting general freight that need access to ports to load or unload their cargo, not just those transporting hazardous materials.

Serious consideration must be given to how current systems and procedures would be converted to the delivery of an SSM permit program. Both the TWIC program and the substantial efforts and investments of the States in the HME infrastructure and processes would have to be considered and evaluated. TSA would want the flexibility to assess alternatives for phasing in implementation of an SSM permit program. Operationally, 100 percent transition to a fingerprint-based background check for the SSM driver population in one year would be very costly. Currently, drivers holding an HME undergo a fingerprint-based security threat assessment on a rolling, five-year basis (on average) based on the renewal dates of drivers' current HME. This evenly distributes the processing load and requires less system capacity and manpower.

Procedural and cost factors for compliance by shippers, including technology costs, need to be evaluated, and enforcement procedures, including roadside options, for a new permit will also need to be established. Today approximately 900,000 law enforcement officers have some responsibility for commercial vehicle enforcement. Under the current system, law enforcement officers can readily discern whether a driver is carrying hazardous materials in amounts requiring placarding and whether the driver has the necessary commercial driver's license hazmat endorsement. These officers would require new training and perhaps implementation of a new support infrastructure if enforcement were to be effective. This is an extremely large task and needs to be weighed when considering any alternative to the current process.

We are also concerned that by requiring TSA to issue a permit to a commercial driver, TSA is effectively being asked to license individuals to transport hazardous materials on

the Nation's highways and ensure the underlying driver's license is valid and appropriately endorsed to transport those materials. This responsibility currently falls under the authority of the states and the DOT by statute. DOT, through the Federal Motor Carrier Safety Administration develops, maintains, and enforces federal regulations including the requirements that promote carrier safety and establish safe operating requirements for commercial vehicle drivers, carriers, vehicles, and vehicle equipment.

TSA places a high value on collaboration with other government agencies and the recommendations of the private sector to improve transportation security. We believe that formation of task forces to assess security risks to motor vehicles transporting security sensitive material and to review the lists of disqualifying crimes of a terrorism security risk is highly relevant and could be beneficial to a potential SSM permit program. We would note, however, that DOT is already engaged in assessing the vulnerabilities of motor vehicles transporting hazardous materials. Unfortunately, the 180 days provided by the bill does not provide sufficient time for the appointment of task force members, collection of information and data, task force deliberation, development of reports, and consideration of task force results in agency decision making. Additionally, the Federal Advisory Committee Act imposes substantial procedural requirements on any task force including non-federal representatives.

TSA is also concerned about the substantial funding needs that such an effort would require. SSM permit user fees may pay for operational costs and the expenses involved in performing threat assessments and issuing the necessary certifications. However, there are substantial costs associated with the infrastructure conversion necessary for such an endeavor and notice and comment rulemaking. There is no current appropriation for this, and the TSA budget request for FY 2007 does not include any such funding to cover these costs, since there is no current authorization for this program.

In conclusion, TSA commends the Subcommittee's efforts to take a risk-based approach to the transport of hazardous materials. I hope the Subcommittee will consider the complex analytical and operational issues that must be considered to ensure security and not cause undue burdens on drivers, industry, or government. Time is needed to provide a smooth transition if Congress determines this is the proper course, and the need to implement an SSM permit process is not immediate. TSA's current HME system, including waiver procedures, is working well, and we are working closely with DOT's Pipeline and Hazardous Materials Safety Administration in looking for areas where there may be opportunities for reducing the regulatory burden on shippers and carriers.

TSA looks forward to working with the Subcommittee to address these issues.

Thank you, again, for this opportunity to appear before the Subcommittee. I will be pleased to answer any questions you may have.